



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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LEGEND

Armed Service's Attorney =

Dear

The Service has received your inquiry about whether the Service can allow a retired veteran to amend his closed returns (i.e., returns for which no refund may be issued) to reflect a decision of an Armed Service's Attorney that the veteran's disability retirement is combat-related. Unfortunately, the Internal Revenue Code appears to prevent the Service or the taxpayer from reopening closed returns, based on the general facts presented.

Section 1311 of the Internal Revenue Code does not seem to have any application in the present situation. Section 1311 is a mitigation provision available to taxpayers if the Service takes a position in an open year that is contrary to a position the Service took in a closed year. In that situation, the taxpayer is allowed to amend the closed year to reflect the Service's current position. Based on the facts presented, § 1311 is inapplicable because the Service has not taken a position that is contrary to its position in a closed year. The Armed Service's Attorney changed its position, not the Service. An examination of other Internal Revenue Code provisions under the general set of facts presented also failed to reveal any other available remedy to overcome the limitation on the period in which to file a claim for refund or credit under § 6511.

To inquire how the law applies to a specific set of facts, you would need to pursue a letter ruling. The procedures for this type of requesting are contained in Revenue Procedure 2002-01. There is a fee associated with this type of request of \$6,000 unless your gross income is less than \$250,000; then the fee is reduced to \$500. See Appendix A, Rev. Proc. 2002-01, 2002-1 I.R.B. 1.

Sincerely,
JAMES ATKINSON
Associate Chief Counsel
(Income Tax and Accounting)
By: George Baker
Chief, Branch 7